

Introduced by Senators Huff and Mitchell

February 20, 2014

An act to amend Sections 1522 and 1522.08 of the Health and Safety Code, to amend Section 11105 of the Penal Code, and to amend Section 16504.5 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1136, as introduced, Huff. Foster care providers: criminal records.

Existing law requires the State Department of Social Services to license and regulate community care facilities, including foster family homes, certified family homes of licensed foster family agencies, and group homes. Existing law requires that persons providing care or services at these homes or facilities obtain either a criminal record clearance or an exemption from disqualification from the department, as prescribed.

Existing law authorizes a child welfare agency to secure from an appropriate governmental criminal justice agency the state summary criminal history information for specified purposes, including an assessment of the appropriateness of placing a child subject to the jurisdiction of the juvenile court with a relative or nonrelative extended family member.

This bill would authorize the State Department of Social Services to share all information related to a criminal record clearance or exemption granted by the department with a county child welfare agency with responsibility to monitor the health and safety of persons receiving care, treatment, or services from state licensed foster homes, certified homes of licensed foster family agencies and employees of those agencies, and licensed group homes. The bill would further authorize a county child welfare agency to receive state-summary criminal history

information for purposes of assessing the appropriateness and safety of placing a child who has been detained or is a dependent of the court in a licensed foster family home, group home, or state-licensed foster home, and monitoring the health and safety of persons in those placements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. *The Legislature also*
9 *recognizes the need for sharing of information between the State*
10 *Department of Social Services and county child welfare agencies*
11 *in order to protect the health and safety of persons receiving care,*
12 *treatment, or services from individuals or facilities licensed or*
13 *certified by the state.* Therefore, the Legislature supports the use
14 of the fingerprint live-scan technology, as identified in the
15 long-range plan of the Department of Justice for fully automating
16 the processing of fingerprints and other data by the year 1999,
17 otherwise known as the California Crime Information Intelligence
18 System (CAL-CII), to be used for applicant fingerprints. It is the
19 intent of the Legislature in enacting this section to require the
20 fingerprints of those individuals whose contact with community
21 care clients may pose a risk to the clients' health and safety. An
22 individual shall be required to obtain either a criminal record
23 clearance or a criminal record exemption from the State Department
24 of Social Services before his or her initial presence in a community
25 care facility.

26 (a) (1) Before issuing a license or special permit to any person
27 or persons to operate or manage a community care facility, the
28 State Department of Social Services shall secure from an
29 appropriate law enforcement agency a criminal record to determine
30 whether the applicant or any other person specified in subdivision

1 (b) has ever been convicted of a crime other than a minor traffic
2 violation or arrested for any crime specified in Section 290 of the
3 Penal Code, for violating Section 245 or 273.5, of the Penal Code,
4 subdivision (b) of Section 273a of the Penal Code, or, prior to
5 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
6 or for any crime for which the department cannot grant an
7 exemption if the person was convicted and the person has not been
8 exonerated.

9 (2) The criminal history information shall include the full
10 criminal record, if any, of those persons, and subsequent arrest
11 information pursuant to Section 11105.2 of the Penal Code.

12 (3) Except during the 2003–04 to the 2014–15 fiscal years,
13 inclusive, neither the Department of Justice nor the State
14 Department of Social Services may charge a fee for the
15 fingerprinting of an applicant for a license or special permit to
16 operate a facility providing nonmedical board, room, and care for
17 six or less children or for obtaining a criminal record of the
18 applicant pursuant to this section.

19 (4) The following shall apply to the criminal record information:

20 (A) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b), has
22 been convicted of a crime other than a minor traffic violation, the
23 application shall be denied, unless the director grants an exemption
24 pursuant to subdivision (g).

25 (B) If the State Department of Social Services finds that the
26 applicant, or any other person specified in subdivision (b) is
27 awaiting trial for a crime other than a minor traffic violation, the
28 State Department of Social Services may cease processing the
29 application until the conclusion of the trial.

30 (C) If no criminal record information has been recorded, the
31 Department of Justice shall provide the applicant and the State
32 Department of Social Services with a statement of that fact.

33 (D) If the State Department of Social Services finds after
34 licensure that the licensee, or any other person specified in
35 paragraph (1) of subdivision (b), has been convicted of a crime
36 other than a minor traffic violation, the license may be revoked,
37 unless the director grants an exemption pursuant to subdivision
38 (g).

39 (E) An applicant and any other person specified in subdivision
40 (b) shall submit fingerprint images and related information to the

1 Department of Justice for the purpose of searching the criminal
2 records of the Federal Bureau of Investigation, in addition to the
3 criminal records search required by this subdivision. If an applicant
4 and all other persons described in subdivision (b) meet all of the
5 conditions for licensure, except receipt of the Federal Bureau of
6 Investigation's criminal offender record information search
7 response for the applicant or any of the persons described in
8 subdivision (b), the department may issue a license if the applicant
9 and each person described in subdivision (b) has signed and
10 submitted a statement that he or she has never been convicted of
11 a crime in the United States, other than a traffic infraction, as
12 prescribed in paragraph (1) of subdivision (a) of Section 42001 of
13 the Vehicle Code. If, after licensure, the department determines
14 that the licensee or any other person specified in subdivision (b)
15 has a criminal record, the license may be revoked pursuant to
16 Section 1550. The department may also suspend the license
17 pending an administrative hearing pursuant to Section 1550.5.

18 (F) The State Department of Social Services shall develop
19 procedures to provide the individual's state and federal criminal
20 history information with the written notification of his or her
21 exemption denial or revocation based on the criminal record.
22 Receipt of the criminal history information shall be optional on
23 the part of the individual, as set forth in the agency's procedures.
24 The procedure shall protect the confidentiality and privacy of the
25 individual's record, and the criminal history information shall not
26 be made available to the employer.

27 (G) Notwithstanding any other law, the department is authorized
28 to provide an individual with a copy of his or her state or federal
29 level criminal offender record information search response as
30 provided to that department by the Department of Justice if the
31 department has denied a criminal background clearance based on
32 this information and the individual makes a written request to the
33 department for a copy specifying an address to which it is to be
34 sent. The state or federal level criminal offender record information
35 search response shall not be modified or altered from its form or
36 content as provided by the Department of Justice and shall be
37 provided to the address specified by the individual in his or her
38 written request. The department shall retain a copy of the
39 individual's written request and the response and date provided.

1 (b) (1) In addition to the applicant, this section shall be
2 applicable to criminal convictions of the following persons:

3 (A) Adults responsible for administration or direct supervision
4 of staff.

5 (B) Any person, other than a client, residing in the facility.

6 (C) Any person who provides client assistance in dressing,
7 grooming, bathing, or personal hygiene. Any nurse assistant or
8 home health aide meeting the requirements of Section 1338.5 or
9 1736.6, respectively, who is not employed, retained, or contracted
10 by the licensee, and who has been certified or recertified on or
11 after July 1, 1998, shall be deemed to meet the criminal record
12 clearance requirements of this section. A certified nurse assistant
13 and certified home health aide who will be providing client
14 assistance and who falls under this exemption shall provide one
15 copy of his or her current certification, prior to providing care, to
16 the community care facility. The facility shall maintain the copy
17 of the certification on file as long as care is being provided by the
18 certified nurse assistant or certified home health aide at the facility.
19 Nothing in this paragraph restricts the right of the department to
20 exclude a certified nurse assistant or certified home health aide
21 from a licensed community care facility pursuant to Section 1558.

22 (D) Any staff person, volunteer, or employee who has contact
23 with the clients.

24 (E) If the applicant is a firm, partnership, association, or
25 corporation, the chief executive officer or other person serving in
26 like capacity.

27 (F) Additional officers of the governing body of the applicant,
28 or other persons with a financial interest in the applicant, as
29 determined necessary by the department by regulation. The criteria
30 used in the development of these regulations shall be based on the
31 person's capability to exercise substantial influence over the
32 operation of the facility.

33 (2) The following persons are exempt from the requirements
34 applicable under paragraph (1):

35 (A) A medical professional as defined in department regulations
36 who holds a valid license or certification from the person's
37 governing California medical care regulatory entity and who is
38 not employed, retained, or contracted by the licensee if all of the
39 following apply:

1 (i) The criminal record of the person has been cleared as a
2 condition of licensure or certification by the person's governing
3 California medical care regulatory entity.

4 (ii) The person is providing time-limited specialized clinical
5 care or services.

6 (iii) The person is providing care or services within the person's
7 scope of practice.

8 (iv) The person is not a community care facility licensee or an
9 employee of the facility.

10 (B) A third-party repair person or similar retained contractor if
11 all of the following apply:

12 (i) The person is hired for a defined, time-limited job.

13 (ii) The person is not left alone with clients.

14 (iii) When clients are present in the room in which the repair
15 person or contractor is working, a staff person who has a criminal
16 record clearance or exemption is also present.

17 (C) Employees of a licensed home health agency and other
18 members of licensed hospice interdisciplinary teams who have a
19 contract with a client or resident of the facility and are in the
20 facility at the request of that client or resident's legal
21 decisionmaker. The exemption does not apply to a person who is
22 a community care facility licensee or an employee of the facility.

23 (D) Clergy and other spiritual caregivers who are performing
24 services in common areas of the community care facility or who
25 are advising an individual client at the request of, or with the
26 permission of, the client or legal decisionmaker, are exempt from
27 fingerprint and criminal background check requirements imposed
28 by community care licensing. This exemption does not apply to a
29 person who is a community care licensee or employee of the
30 facility.

31 (E) Members of fraternal, service, or similar organizations who
32 conduct group activities for clients if all of the following apply:

33 (i) Members are not left alone with clients.

34 (ii) Members do not transport clients off the facility premises.

35 (iii) The same organization does not conduct group activities
36 for clients more often than defined by the department's regulations.

37 (3) In addition to the exemptions in paragraph (2), the following
38 persons in foster family homes, certified family homes, and small
39 family homes are exempt from the requirements applicable under
40 paragraph (1):

1 (A) Adult friends and family of the licensed or certified foster
2 parent, who come into the home to visit for a length of time no
3 longer than defined by the department in regulations, provided
4 that the adult friends and family of the licensee are not left alone
5 with the foster children. However, the licensee, acting as a
6 reasonable and prudent parent, as defined in paragraph (2) of
7 subdivision (a) of Section 362.04 of the Welfare and Institutions
8 Code, may allow his or her adult friends and family to provide
9 short-term care to the foster child and act as an appropriate
10 occasional short-term babysitter for the child.

11 (B) Parents of a foster child's friend when the foster child is
12 visiting the friend's home and the friend, licensed or certified foster
13 parent, or both are also present. However, the licensee, acting as
14 a reasonable and prudent parent, may allow the parent of the foster
15 child's friend to act as an appropriate short-term babysitter for the
16 child without the friend being present.

17 (C) Individuals who are engaged by any licensed or certified
18 foster parent to provide short-term care to the child for periods not
19 to exceed 24 hours. Caregivers shall use a reasonable and prudent
20 parent standard in selecting appropriate individuals to act as
21 appropriate occasional short-term babysitters.

22 (4) In addition to the exemptions specified in paragraph (2), the
23 following persons in adult day care and adult day support centers
24 are exempt from the requirements applicable under paragraph (1):

25 (A) Unless contraindicated by the client's individualized
26 program plan (IPP) or needs and service plan, a spouse, significant
27 other, relative, or close friend of a client, or an attendant or a
28 facilitator for a client with a developmental disability if the
29 attendant or facilitator is not employed, retained, or contracted by
30 the licensee. This exemption applies only if the person is visiting
31 the client or providing direct care and supervision to the client.

32 (B) A volunteer if all of the following applies:

33 (i) The volunteer is supervised by the licensee or a facility
34 employee with a criminal record clearance or exemption.

35 (ii) The volunteer is never left alone with clients.

36 (iii) The volunteer does not provide any client assistance with
37 dressing, grooming, bathing, or personal hygiene other than
38 washing of hands.

39 (5) (A) In addition to the exemptions specified in paragraph
40 (2), the following persons in adult residential and social

1 rehabilitation facilities, unless contraindicated by the client's
2 individualized program plan (IPP) or needs and services plan, are
3 exempt from the requirements applicable under paragraph (1): a
4 spouse, significant other, relative, or close friend of a client, or an
5 attendant or a facilitator for a client with a developmental disability
6 if the attendant or facilitator is not employed, retained, or
7 contracted by the licensee. This exemption applies only if the
8 person is visiting the client or providing direct care and supervision
9 to that client.

10 (B) Nothing in this subdivision shall prevent a licensee from
11 requiring a criminal record clearance of any individual exempt
12 from the requirements of this section, provided that the individual
13 has client contact.

14 (6) Any person similar to those described in this subdivision,
15 as defined by the department in regulations.

16 (c) (1) Subsequent to initial licensure, a person specified in
17 subdivision (b) who is not exempted from fingerprinting shall
18 obtain either a criminal record clearance or an exemption from
19 disqualification pursuant to subdivision (g) from the State
20 Department of Social Services prior to employment, residence, or
21 initial presence in the facility. A person specified in subdivision
22 (b) who is not exempt from fingerprinting shall be fingerprinted
23 and shall sign a declaration under penalty of perjury regarding any
24 prior criminal convictions. The licensee shall submit fingerprint
25 images and related information to the Department of Justice and
26 the Federal Bureau of Investigation, through the Department of
27 Justice, for a state and federal level criminal offender record
28 information search, or comply with paragraph (1) of subdivision
29 (h). These fingerprint images and related information shall be sent
30 by electronic transmission in a manner approved by the State
31 Department of Social Services and the Department of Justice for
32 the purpose of obtaining a permanent set of fingerprints, and shall
33 be submitted to the Department of Justice by the licensee. A
34 licensee's failure to prohibit the employment, residence, or initial
35 presence of a person specified in subdivision (b) who is not exempt
36 from fingerprinting and who has not received either a criminal
37 record clearance or an exemption from disqualification pursuant
38 to subdivision (g) or to comply with paragraph (1) of subdivision
39 (h), as required in this section, shall result in the citation of a
40 deficiency and the immediate assessment of civil penalties in the

1 amount of one hundred dollars (\$100) per violation per day for a
2 maximum of five days, unless the violation is a second or
3 subsequent violation within a 12-month period in which case the
4 civil penalties shall be in the amount of one hundred dollars (\$100)
5 per violation for a maximum of 30 days, and shall be grounds for
6 disciplining the licensee pursuant to Section 1550. The department
7 may assess civil penalties for continued violations as permitted by
8 Section 1548. The fingerprint images and related information shall
9 then be submitted to the Department of Justice for processing.
10 Upon request of the licensee, who shall enclose a self-addressed
11 stamped postcard for this purpose, the Department of Justice shall
12 verify receipt of the fingerprints.

13 (2) Within 14 calendar days of the receipt of the fingerprint
14 images, the Department of Justice shall notify the State Department
15 of Social Services of the criminal record information, as provided
16 for in subdivision (a). If no criminal record information has been
17 recorded, the Department of Justice shall provide the licensee and
18 the State Department of Social Services with a statement of that
19 fact within 14 calendar days of receipt of the fingerprint images.
20 Documentation of the individual's clearance or exemption from
21 disqualification shall be maintained by the licensee and be available
22 for inspection. If new fingerprint images are required for
23 processing, the Department of Justice shall, within 14 calendar
24 days from the date of receipt of the fingerprints, notify the licensee
25 that the fingerprints were illegible, the Department of Justice shall
26 notify the State Department of Social Services, as required by
27 Section 1522.04, and shall also notify the licensee by mail, within
28 14 days of electronic transmission of the fingerprints to the
29 Department of Justice, if the person has no criminal history
30 recorded. A violation of the regulations adopted pursuant to Section
31 1522.04 shall result in the citation of a deficiency and an immediate
32 assessment of civil penalties in the amount of one hundred dollars
33 (\$100) per violation per day for a maximum of five days, unless
34 the violation is a second or subsequent violation within a 12-month
35 period in which case the civil penalties shall be in the amount of
36 one hundred dollars (\$100) per violation for a maximum of 30
37 days, and shall be grounds for disciplining the licensee pursuant
38 to Section 1550. The department may assess civil penalties for
39 continued violations as permitted by Section 1548.

(3) Except for persons specified in subdivision (b) who are exempt from fingerprinting, the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that subsequent to obtaining a criminal record clearance or exemption from disqualification pursuant to subdivision (g), the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption from disqualification pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption from disqualification pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption from disqualification is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day and shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption from disqualification on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption from disqualification pursuant to this paragraph.

1 (5) Concurrently with notifying the licensee pursuant to
2 paragraph (3), the department shall notify the affected individual
3 of his or her right to seek an exemption from disqualification
4 pursuant to subdivision (g). The individual may seek an exemption
5 from disqualification only if the licensee terminates the person's
6 employment or removes the person from the facility after receiving
7 notice from the department pursuant to paragraph (3).

8 (d) (1) Before issuing a license or certificate of approval to any
9 person or persons to operate a foster family home or certified
10 family home as described in Section 1506, the State Department
11 of Social Services or other approving authority shall secure
12 California and Federal Bureau of Investigation criminal history
13 information to determine whether the applicant or any person
14 specified in subdivision (b) who is not exempt from fingerprinting
15 has ever been convicted of a crime other than a minor traffic
16 violation or arrested for any crime specified in subdivision (c) of
17 Section 290 of the Penal Code, for violating Section 245 or 273.5,
18 subdivision (b) of Section 273a or, prior to January 1, 1994,
19 paragraph (2) of Section 273a of the Penal Code, or for any crime
20 for which the department cannot grant an exemption if the person
21 was convicted and the person has not been exonerated. The State
22 Department of Social Services or other approving authority shall
23 not issue a license or certificate of approval to any foster family
24 home or certified family home applicant who has not obtained
25 both a California and Federal Bureau of Investigation criminal
26 record clearance or exemption from disqualification pursuant to
27 subdivision (g).

28 (2) The criminal history information shall include the full
29 criminal record, if any, of those persons.

30 (3) Neither the Department of Justice nor the State Department
31 of Social Services may charge a fee for the fingerprinting of an
32 applicant for a license, special permit, or certificate of approval
33 described in this subdivision. The record, if any, shall be taken
34 into consideration when evaluating a prospective applicant.

35 (4) The following shall apply to the criminal record information:

36 (A) If the applicant or other persons specified in subdivision
37 (b) who are not exempt from fingerprinting have convictions that
38 would make the applicant's home unfit as a foster family home or
39 a certified family home, the license, special permit, or certificate
40 of approval shall be denied.

1 (B) If the State Department of Social Services finds that the
2 applicant, or any person specified in subdivision (b) who is not
3 exempt from fingerprinting is awaiting trial for a crime other than
4 a minor traffic violation, the State Department of Social Services
5 or other approving authority may cease processing the application
6 until the conclusion of the trial.

7 (C) For purposes of this subdivision, a criminal record clearance
8 provided under Section 8712 of the Family Code may be used by
9 the department or other approving agency.

10 (D) To the same extent required for federal funding, an applicant
11 for a foster family home license or for certification as a family
12 home, and any other person specified in subdivision (b) who is
13 not exempt from fingerprinting, shall submit a set of fingerprint
14 images and related information to the Department of Justice and
15 the Federal Bureau of Investigation, through the Department of
16 Justice, for a state and federal level criminal offender record
17 information search, in addition to the criminal records search
18 required by subdivision (a).

19 (5) Any person specified in this subdivision shall, as a part of
20 the application, be fingerprinted and sign a declaration under
21 penalty of perjury regarding any prior criminal convictions or
22 arrests for any crime against a child, spousal or cohabitant abuse
23 or, any crime for which the department cannot grant an exemption
24 if the person was convicted and shall submit these fingerprints to
25 the licensing agency or other approving authority.

26 (6) (A) Subsequent to initial licensure or certification, a person
27 specified in subdivision (b) who is not exempt from fingerprinting
28 shall obtain both a California and Federal Bureau of Investigation
29 criminal record clearance, or an exemption from disqualification
30 pursuant to subdivision (g), prior to employment, residence, or
31 initial presence in the foster family or certified family home. A
32 foster family home licensee or foster family agency shall submit
33 fingerprint images and related information of persons specified in
34 subdivision (b) who are not exempt from fingerprinting to the
35 Department of Justice and the Federal Bureau of Investigation,
36 through the Department of Justice, for a state and federal level
37 criminal offender record information search, or to comply with
38 paragraph (1) of subdivision (h). A foster family home licensee's
39 or a foster family agency's failure to either prohibit the
40 employment, residence, or initial presence of a person specified

1 in subdivision (b) who is not exempt from fingerprinting and who
2 has not received either a criminal record clearance or an exemption
3 from disqualification pursuant to subdivision (g), or comply with
4 paragraph (1) of subdivision (h), as required in this section, shall
5 result in a citation of a deficiency, and the immediate civil penalties
6 of one hundred dollars (\$100) per violation per day for a maximum
7 of five days, unless the violation is a second or subsequent violation
8 within a 12-month period in which case the civil penalties shall
9 be in the amount of one hundred dollars (\$100) per violation for
10 a maximum of 30 days, and shall be grounds for disciplining the
11 licensee pursuant to Section 1550. A violation of the regulation
12 adopted pursuant to Section 1522.04 shall result in the citation of
13 a deficiency and an immediate assessment of civil penalties in the
14 amount of one hundred dollars (\$100) per violation per day for a
15 maximum of five days, unless the violation is a second or
16 subsequent violation within a 12-month period in which case the
17 civil penalties shall be in the amount of one hundred dollars (\$100)
18 per violation for a maximum of 30 days, and shall be grounds for
19 disciplining the foster family home licensee or the foster family
20 agency pursuant to Section 1550. The State Department of Social
21 Services may assess penalties for continued violations, as permitted
22 by Section 1548. The fingerprint images shall then be submitted
23 to the Department of Justice for processing.

24 (B) Upon request of the licensee, who shall enclose a
25 self-addressed envelope for this purpose, the Department of Justice
26 shall verify receipt of the fingerprints. Within five working days
27 of the receipt of the criminal record or information regarding
28 criminal convictions from the Department of Justice, the
29 department shall notify the applicant of any criminal arrests or
30 convictions. If no arrests or convictions are recorded, the
31 Department of Justice shall provide the foster family home licensee
32 or the foster family agency with a statement of that fact concurrent
33 with providing the information to the State Department of Social
34 Services.

35 (7) If the State Department of Social Services finds that the
36 applicant, or any other person specified in subdivision (b) who is
37 not exempt from fingerprinting, has been convicted of a crime
38 other than a minor traffic violation, the application shall be denied,
39 unless the director grants an exemption from disqualification
40 pursuant to subdivision (g).

1 (8) If the State Department of Social Services finds after
2 licensure or the granting of the certificate of approval that the
3 licensee, certified foster parent, or any other person specified in
4 subdivision (b) who is not exempt from fingerprinting, has been
5 convicted of a crime other than a minor traffic violation, the license
6 or certificate of approval may be revoked by the department or the
7 foster family agency, whichever is applicable, unless the director
8 grants an exemption from disqualification pursuant to subdivision
9 (g). A licensee's failure to comply with the department's
10 prohibition of employment, contact with clients, or presence in
11 the facility as required by paragraph (3) of subdivision (c) shall
12 be grounds for disciplining the licensee pursuant to Section 1550.

13 (e) The State Department of Social Services shall not use a
14 record of arrest to deny, revoke, or terminate any application,
15 license, employment, or residence unless the department
16 investigates the incident and secures evidence, whether or not
17 related to the incident of arrest, that is admissible in an
18 administrative hearing to establish conduct by the person that may
19 pose a risk to the health and safety of any person who is or may
20 become a client. The State Department of Social Services is
21 authorized to obtain any arrest or conviction records or reports
22 from any law enforcement agency as necessary to the performance
23 of its duties to inspect, license, and investigate community care
24 facilities and individuals associated with a community care facility.

25 (f) (1) For purposes of this section or any other provision of
26 this chapter, a conviction means a plea or verdict of guilty or a
27 conviction following a plea of nolo contendere. Any action that
28 the State Department of Social Services is permitted to take
29 following the establishment of a conviction may be taken when
30 the time for appeal has elapsed, when the judgment of conviction
31 has been affirmed on appeal, or when an order granting probation
32 is made suspending the imposition of sentence, notwithstanding
33 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
34 Penal Code permitting the person to withdraw his or her plea of
35 guilty and to enter a plea of not guilty, or setting aside the verdict
36 of guilty, or dismissing the accusation, information, or indictment.
37 For purposes of this section or any other provision of this chapter,
38 the record of a conviction, or a copy thereof certified by the clerk
39 of the court or by a judge of the court in which the conviction
40 occurred, shall be conclusive evidence of the conviction. For

1 purposes of this section or any other provision of this chapter, the
2 arrest disposition report certified by the Department of Justice, or
3 documents admissible in a criminal action pursuant to Section
4 969b of the Penal Code, shall be prima facie evidence of the
5 conviction, notwithstanding any other law prohibiting the
6 admission of these documents in a civil or administrative action.

7 (2) For purposes of this section or any other provision of this
8 chapter, the department shall consider criminal convictions from
9 another state or federal court as if the criminal offense was
10 committed in this state.

11 (g) (1) After review of the record, the director may grant an
12 exemption from disqualification for a license or special permit as
13 specified in paragraph (4) of subdivision (a), or for a license,
14 special permit, or certificate of approval as specified in paragraphs
15 (4), (7), and (8) of subdivision (d), or for employment, residence,
16 or presence in a community care facility as specified in paragraphs
17 (3), (4), and (5) of subdivision (c), if the director has substantial
18 and convincing evidence to support a reasonable belief that the
19 applicant and the person convicted of the crime, if other than the
20 applicant, are of good character as to justify issuance of the license
21 or special permit or granting an exemption for purposes of
22 subdivision (c). Except as otherwise provided in this subdivision,
23 an exemption shall not be granted pursuant to this subdivision if
24 the conviction was for any of the following offenses:

25 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
26 subdivision (a) of Section 273a or, prior to January 1, 1994,
27 paragraph (1) of Section 273a, Section 273d, 288, or 289,
28 subdivision (c) of Section 290, or Section 368 of the Penal Code,
29 or was a conviction of another crime against an individual specified
30 in subdivision (c) of Section 667.5 of the Penal Code.

31 (ii) Notwithstanding clause (i), the director may grant an
32 exemption regarding the conviction for an offense described in
33 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
34 of the Penal Code, if the employee or prospective employee has
35 been rehabilitated as provided in Section 4852.03 of the Penal
36 Code, has maintained the conduct required in Section 4852.05 of
37 the Penal Code for at least 10 years, and has the recommendation
38 of the district attorney representing the employee's county of
39 residence, or if the employee or prospective employee has received
40 a certificate of rehabilitation pursuant to Chapter 3.5 (commencing

1 with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This
2 clause shall not apply to foster care providers, including relative
3 caregivers, nonrelated extended family members, or any other
4 person specified in subdivision (b), in those homes where the
5 individual has been convicted of an offense described in paragraph
6 (1) of subdivision (c) of Section 667.5 of the Penal Code.

7 (B) A felony offense specified in Section 729 of the Business
8 and Professions Code or Section 206 or 215, subdivision (a) of
9 Section 347, subdivision (b) of Section 417, or subdivision (a) of
10 Section 451 of the Penal Code.

11 (C) Under no circumstances shall an exemption be granted
12 pursuant to this subdivision to any foster care provider applicant
13 if that applicant, or any other person specified in subdivision (b)
14 in those homes, has a felony conviction for either of the following
15 offenses:

16 (i) A felony conviction for child abuse or neglect, spousal abuse,
17 crimes against a child, including child pornography, or for a crime
18 involving violence, including rape, sexual assault, or homicide,
19 but not including other physical assault and battery. For purposes
20 of this subparagraph, a crime involving violence means a violent
21 crime specified in clause (i) of subparagraph (A), or subparagraph
22 (B).

23 (ii) A felony conviction, within the last five years, for physical
24 assault, battery, or a drug- or alcohol-related offense.

25 (iii) This subparagraph shall not apply to licenses or approvals
26 wherein a caregiver was granted an exemption to a criminal
27 conviction described in clause (i) or (ii) prior to the enactment of
28 this subparagraph.

29 (iv) This subparagraph shall remain operative only to the extent
30 that compliance with its provisions is required by federal law as
31 a condition for receiving funding under Title IV-E of the federal
32 Social Security Act (42 U.S.C. Sec. 670 et seq.).

33 (2) The department shall not prohibit a person from being
34 employed or having contact with clients in a facility on the basis
35 of a denied criminal record exemption request or arrest information
36 unless the department complies with the requirements of Section
37 1558.

38 (h) (1) For purposes of compliance with this section, the
39 department may permit an individual to transfer a current criminal
40 record clearance, as defined in subdivision (a), from one facility

1 to another, as long as the criminal record clearance has been
2 processed through a state licensing district office, and is being
3 transferred to another facility licensed by a state licensing district
4 office. The request shall be in writing to the State Department of
5 Social Services, and shall include a copy of the person's driver's
6 license or valid identification card issued by the Department of
7 Motor Vehicles, or a valid photo identification issued by another
8 state or the United States government if the person is not a
9 California resident. Upon request of the licensee, who shall enclose
10 a self-addressed envelope for this purpose, the State Department
11 of Social Services shall verify whether the individual has a
12 clearance that can be transferred.

13 (2) The State Department of Social Services shall hold criminal
14 record clearances in its active files for a minimum of three years
15 after an employee is no longer employed at a licensed facility in
16 order for the criminal record clearance to be transferred.

17 (3) The following shall apply to a criminal record clearance or
18 exemption from the department or a county office with
19 department-delegated licensing authority:

20 (A) A county office with department-delegated licensing
21 authority may accept a clearance or exemption from the
22 department.

23 (B) The department may accept a clearance or exemption from
24 any county office with department-delegated licensing authority.

25 (C) A county office with department-delegated licensing
26 authority may accept a clearance or exemption from any other
27 county office with department-delegated licensing authority.

28 (4) With respect to notifications issued by the Department of
29 Justice pursuant to Section 11105.2 of the Penal Code concerning
30 an individual whose criminal record clearance was originally
31 processed by the department or a county office with
32 department-delegated licensing authority, all of the following shall
33 apply:

34 (A) The Department of Justice shall process a request from the
35 department or a county office with department-delegated licensing
36 authority to receive the notice only if all of the following conditions
37 are met:

38 (i) The request shall be submitted to the Department of Justice
39 by the agency to be substituted to receive the notification.

1 (ii) The request shall be for the same applicant type as the type
2 for which the original clearance was obtained.

3 (iii) The request shall contain all prescribed data elements and
4 format protocols pursuant to a written agreement between the
5 department and the Department of Justice.

6 (B) (i) On or before January 7, 2005, the department shall notify
7 the Department of Justice of all county offices that have
8 department-delegated licensing authority.

9 (ii) The department shall notify the Department of Justice within
10 15 calendar days of the date on which a new county office receives
11 department-delegated licensing authority or a county's delegated
12 licensing authority is rescinded.

13 (C) The Department of Justice shall charge the department, a
14 county office with department-delegated licensing authority, or a
15 county child welfare agency with criminal record clearance and
16 exemption authority, a fee for each time a request to substitute the
17 recipient agency is received for purposes of this paragraph. This
18 fee shall not exceed the cost of providing the service.

19 (5) (A) A county child welfare agency with authority to secure
20 clearances pursuant to Section 16504.5 of the Welfare and
21 Institutions Code and to grant exemptions pursuant to Section
22 361.4 of the Welfare and Institutions Code may accept a clearance
23 or exemption from another county with criminal record and
24 exemption authority pursuant to these sections.

25 (B) With respect to notifications issued by the Department of
26 Justice pursuant to Section 11105.2 of the Penal Code concerning
27 an individual whose criminal record clearance was originally
28 processed by a county child welfare agency with criminal record
29 clearance and exemption authority, the Department of Justice shall
30 process a request from a county child welfare agency with criminal
31 record and exemption authority to receive the notice only if all of
32 the following conditions are met:

33 (i) The request shall be submitted to the Department of Justice
34 by the agency to be substituted to receive the notification.

35 (ii) The request shall be for the same applicant type as the type
36 for which the original clearance was obtained.

37 (iii) The request shall contain all prescribed data elements and
38 format protocols pursuant to a written agreement between the State
39 Department of Social Services and the Department of Justice.

1 (i) The full criminal record obtained for purposes of this section
2 may be used by the department or by a licensed adoption agency
3 as a clearance required for adoption purposes.

4 (j) *The State Department of Social Services may share all*
5 *information related to a criminal record clearance or exemption*
6 *from the department with a county child welfare agency with*
7 *responsibility to monitor the health and safety of persons receiving*
8 *care, treatment, or services from state licensed foster homes,*
9 *certified homes of licensed foster family agencies, licensed group*
10 *homes, and foster family agencies and their employees.*

11 ~~(j)~~

12 (k) If a licensee or facility is required by law to deny
13 employment or to terminate employment of any employee based
14 on written notification from the state department that the employee
15 has a prior criminal conviction or is determined unsuitable for
16 employment under Section 1558, the licensee or facility shall not
17 incur civil liability or unemployment insurance liability as a result
18 of that denial or termination.

19 ~~(k)~~

20 (l) The State Department of Social Services may charge a fee
21 for the costs of processing electronic fingerprint images and related
22 information.

23 ~~(l)~~

24 (m) Amendments to this section made in the 1999 portion of
25 the 1999–2000 Regular Session shall be implemented commencing
26 60 days after the effective date of the act amending this section in
27 the 1999 portion of the 1999–2000 Regular Session, except that
28 those provisions for the submission of fingerprints for searching
29 the records of the Federal Bureau of Investigation shall be
30 implemented 90 days after the effective date of that act.

31 SEC. 2. Section 1522.08 of the Health and Safety Code, as
32 amended by Section 15 of Chapter 22 of the Statutes of 2013, is
33 amended to read:

34 1522.08. (a) In order to protect the health and safety of persons
35 receiving care or services from individuals or facilities licensed
36 or certified by the state, the *following information may be shared*:

37 (1) *The California Department of Aging, State Department of*
38 *Public Health, State Department of Health Care Services, State*
39 *Department of Social Services, and the Emergency Medical*
40 *Services Authority may share information with respect to*

1 applicants, licensees, certificates, or individuals who have been
2 the subject of any administrative action resulting in the denial,
3 suspension, probation, or revocation of a license, permit, or
4 certificate, or in the exclusion of any person from a facility who
5 is subject to a background check, as otherwise provided by law.

6 (2) *The State Department of Social Services and county child*
7 *welfare agencies may share information, including state summary*
8 *criminal history information, with respect to applicants, licensees,*
9 *certificates, or individuals who have been the subject of any*
10 *administrative action resulting in the denial, suspension, probation,*
11 *or revocation of a license, permit, or certificate, or in the exclusion*
12 *of any person from a facility who is subject to a background check,*
13 *as otherwise provided by law.*

14 (b) The State Department of Social Services shall maintain a
15 centralized system for the monitoring and tracking of final
16 administrative actions, to be used by the California Department
17 of Aging, State Department of Public Health, State Department of
18 Health Care Services, State Department of Social Services, ~~and~~
19 the Emergency Medical Services Authority, *and county child*
20 *welfare agencies* as a part of the background check process. The
21 State Department of Social Services may charge a fee to
22 departments under the jurisdiction of the California Health and
23 Human Services Agency *and to county child welfare agencies*
24 sufficient to cover the cost of providing those departments with
25 the final administrative action specified in subdivision (a). To the
26 extent that additional funds are needed for this purpose,
27 implementation of this subdivision shall be contingent upon a
28 specific appropriation provided for this purpose in the annual
29 Budget Act.

30 (c) The State Department of Social Services, in consultation
31 with the other departments under the jurisdiction of the California
32 Health and Human Services Agency, may adopt regulations to
33 implement this section.

34 (d) For the purposes of this section and Section 1499,
35 “administrative action” means any proceeding initiated by the
36 California Department of Aging, State Department of Public
37 Health, State Department of Health Care Services, State
38 Department of Social Services, and the Emergency Medical
39 Services Authority to determine the rights and duties of an
40 applicant, licensee, or other individual or entity over which the

1 department has jurisdiction. “Administrative action” may include,
2 but is not limited to, action involving the denial of an application
3 for, or the suspension or revocation of, any license, special permit,
4 administrator certificate, criminal record clearance, or exemption.

5 SEC. 3. Section 11105 of the Penal Code is amended to read:

6 11105. (a) (1) The Department of Justice shall maintain state
7 summary criminal history information.

8 (2) As used in this section:

9 (A) “State summary criminal history information” means the
10 master record of information compiled by the Attorney General
11 pertaining to the identification and criminal history of any person,
12 such as name, date of birth, physical description, fingerprints,
13 photographs, dates of arrests, arresting agencies and booking
14 numbers, charges, dispositions, and similar data about the person.

15 (B) “State summary criminal history information” does not refer
16 to records and data compiled by criminal justice agencies other
17 than the Attorney General, nor does it refer to records of complaints
18 to or investigations conducted by, or records of intelligence
19 information or security procedures of, the office of the Attorney
20 General and the Department of Justice.

21 (b) The Attorney General shall furnish state summary criminal
22 history information to any of the following, if needed in the course
23 of their duties, provided that when information is furnished to
24 assist an agency, officer, or official of state or local government,
25 a public utility, or any other entity, in fulfilling employment,
26 certification, or licensing duties, Chapter 1321 of the Statutes of
27 1974 and Section 432.7 of the Labor Code shall apply:

28 (1) The courts of the state.

29 (2) Peace officers of the state, as defined in Section 830.1,
30 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
31 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision
32 (a) of Section 830.31.

33 (3) District attorneys of the state.

34 (4) Prosecuting city attorneys of any city within the state.

35 (5) City attorneys pursuing civil gang injunctions pursuant to
36 Section 186.22a, or drug abatement actions pursuant to Section
37 3479 or 3480 of the Civil Code, or Section 11571 of the Health
38 and Safety Code.

39 (6) Probation officers of the state.

40 (7) Parole officers of the state.

1 (8) A public defender or attorney of record when representing
2 a person in proceedings upon a petition for a certificate of
3 rehabilitation and pardon pursuant to Section 4852.08.

4 (9) A public defender or attorney of record when representing
5 a person in a criminal case, or a parole, mandatory supervision
6 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
7 postrelease community supervision revocation or revocation
8 extension proceeding, and if authorized access by statutory or
9 decisional law.

10 (10) Any agency, officer, or official of the state if the criminal
11 history information is required to implement a statute or regulation
12 that expressly refers to specific criminal conduct applicable to the
13 subject person of the state summary criminal history information,
14 and contains requirements or exclusions, or both, expressly based
15 upon that specified criminal conduct. The agency, officer, or
16 official of the state authorized by this paragraph to receive state
17 summary criminal history information may also transmit fingerprint
18 images and related information to the Department of Justice to be
19 transmitted to the Federal Bureau of Investigation.

20 (11) Any city or county, city and county, district, or any officer
21 or official thereof if access is needed in order to assist that agency,
22 officer, or official in fulfilling employment, certification, or
23 licensing duties, and if the access is specifically authorized by the
24 city council, board of supervisors, or governing board of the city,
25 county, or district if the criminal history information is required
26 to implement a statute, ordinance, or regulation that expressly
27 refers to specific criminal conduct applicable to the subject person
28 of the state summary criminal history information, and contains
29 requirements or exclusions, or both, expressly based upon that
30 specified criminal conduct. The city or county, city and county,
31 district, or the officer or official thereof authorized by this
32 paragraph may also transmit fingerprint images and related
33 information to the Department of Justice to be transmitted to the
34 Federal Bureau of Investigation.

35 (12) The subject of the state summary criminal history
36 information under procedures established under Article 5
37 (commencing with Section 11120).

38 (13) Any person or entity when access is expressly authorized
39 by statute if the criminal history information is required to
40 implement a statute or regulation that expressly refers to specific

1 criminal conduct applicable to the subject person of the state
2 summary criminal history information, and contains requirements
3 or exclusions, or both, expressly based upon that specified criminal
4 conduct.

5 (14) Health officers of a city, county, city and county, or district
6 when in the performance of their official duties enforcing Section
7 120175 of the Health and Safety Code.

8 (15) Any managing or supervising correctional officer of a
9 county jail or other county correctional facility.

10 (16) Any humane society, or society for the prevention of cruelty
11 to animals, for the specific purpose of complying with Section
12 14502 of the Corporations Code for the appointment of humane
13 officers.

14 (17) Local child support agencies established by Section 17304
15 of the Family Code. When a local child support agency closes a
16 support enforcement case containing summary criminal history
17 information, the agency shall delete or purge from the file and
18 destroy any documents or information concerning or arising from
19 offenses for or of which the parent has been arrested, charged, or
20 convicted, other than for offenses related to the parent's having
21 failed to provide support for minor children, consistent with the
22 requirements of Section 17531 of the Family Code.

23 (18) County child welfare agency personnel who have been
24 delegated the authority of county probation officers to access state
25 summary criminal history information pursuant to Section 272 of
26 the Welfare and Institutions Code for the purposes specified in
27 Section 16504.5 of the Welfare and Institutions Code *or Section*
28 *1522 of the Health and Safety Code*. Information from criminal
29 history records provided pursuant to this subdivision shall not be
30 used for any purposes other than those specified in this section
31 ~~and~~, Section 16504.5 of the Welfare and Institutions Code, *and*
32 *Section 1522 of the Health and Safety Code*. When an agency
33 obtains records obtained both on the basis of name checks and
34 fingerprint checks, final placement decisions shall be based only
35 on the records obtained pursuant to the fingerprint check.

36 (19) The court of a tribe, or court of a consortium of tribes, that
37 has entered into an agreement with the state pursuant to Section
38 10553.1 of the Welfare and Institutions Code. This information
39 may be used only for the purposes specified in Section 16504.5
40 of the Welfare and Institutions Code and for tribal approval or

1 tribal licensing of foster care or adoptive homes. Article 6
2 (commencing with Section 11140) shall apply to officers, members,
3 and employees of a tribal court receiving criminal record offender
4 information pursuant to this section.

5 (20) Child welfare agency personnel of a tribe or consortium
6 of tribes that has entered into an agreement with the state pursuant
7 to Section 10553.1 of the Welfare and Institutions Code and to
8 whom the state has delegated duties under paragraph (2) of
9 subdivision (a) of Section 272 of the Welfare and Institutions Code.
10 The purposes for use of the information shall be for the purposes
11 specified in Section 16504.5 of the Welfare and Institutions Code
12 and for tribal approval or tribal licensing of foster care or adoptive
13 homes. When an agency obtains records on the basis of name
14 checks and fingerprint checks, final placement decisions shall be
15 based only on the records obtained pursuant to the fingerprint
16 check. Article 6 (commencing with Section 11140) shall apply to
17 child welfare agency personnel receiving criminal record offender
18 information pursuant to this section.

19 (21) An officer providing conservatorship investigations
20 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
21 Institutions Code.

22 (22) A court investigator providing investigations or reviews
23 in conservatorships pursuant to Section 1826, 1850, 1851, or
24 2250.6 of the Probate Code.

25 (23) A person authorized to conduct a guardianship investigation
26 pursuant to Section 1513 of the Probate Code.

27 (24) A humane officer pursuant to Section 14502 of the
28 Corporations Code for the purposes of performing his or her duties.

29 (25) A public agency described in subdivision (b) of Section
30 15975 of the Government Code, for the purpose of oversight and
31 enforcement policies with respect to its contracted providers.

32 (c) The Attorney General may furnish state summary criminal
33 history information and, when specifically authorized by this
34 subdivision, federal level criminal history information upon a
35 showing of a compelling need to any of the following, provided
36 that when information is furnished to assist an agency, officer, or
37 official of state or local government, a public utility, or any other
38 entity in fulfilling employment, certification, or licensing duties,
39 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
40 Labor Code shall apply:

1 (1) Any public utility, as defined in Section 216 of the Public
2 Utilities Code, that operates a nuclear energy facility when access
3 is needed in order to assist in employing persons to work at the
4 facility, provided that, if the Attorney General supplies the data,
5 he or she shall furnish a copy of the data to the person to whom
6 the data relates.

7 (2) To a peace officer of the state other than those included in
8 subdivision (b).

9 (3) To an illegal dumping enforcement officer as defined in
10 subdivision (j) of Section 830.7.

11 (4) To a peace officer of another country.

12 (5) To public officers, other than peace officers, of the United
13 States, other states, or possessions or territories of the United
14 States, provided that access to records similar to state summary
15 criminal history information is expressly authorized by a statute
16 of the United States, other states, or possessions or territories of
17 the United States if the information is needed for the performance
18 of their official duties.

19 (6) To any person when disclosure is requested by a probation,
20 parole, or peace officer with the consent of the subject of the state
21 summary criminal history information and for purposes of
22 furthering the rehabilitation of the subject.

23 (7) The courts of the United States, other states, or territories
24 or possessions of the United States.

25 (8) Peace officers of the United States, other states, or territories
26 or possessions of the United States.

27 (9) To any individual who is the subject of the record requested
28 if needed in conjunction with an application to enter the United
29 States or any foreign nation.

30 (10) (A) (i) Any public utility, as defined in Section 216 of the
31 Public Utilities Code, or any cable corporation as defined in
32 subparagraph (B), if receipt of criminal history information is
33 needed in order to assist in employing current or prospective
34 employees, contract employees, or subcontract employees who,
35 in the course of their employment may be seeking entrance to
36 private residences or adjacent grounds. The information provided
37 shall be limited to the record of convictions and any arrest for
38 which the person is released on bail or on his or her own
39 recognizance pending trial.

1 (ii) If the Attorney General supplies the data pursuant to this
2 paragraph, the Attorney General shall furnish a copy of the data
3 to the current or prospective employee to whom the data relates.

4 (iii) Any information obtained from the state summary criminal
5 history is confidential and the receiving public utility or cable
6 corporation shall not disclose its contents, other than for the
7 purpose for which it was acquired. The state summary criminal
8 history information in the possession of the public utility or cable
9 corporation and all copies made from it shall be destroyed not
10 more than 30 days after employment or promotion or transfer is
11 denied or granted, except for those cases where a current or
12 prospective employee is out on bail or on his or her own
13 recognizance pending trial, in which case the state summary
14 criminal history information and all copies shall be destroyed not
15 more than 30 days after the case is resolved.

16 (iv) A violation of this paragraph is a misdemeanor, and shall
17 give the current or prospective employee who is injured by the
18 violation a cause of action against the public utility or cable
19 corporation to recover damages proximately caused by the
20 violations. Any public utility's or cable corporation's request for
21 state summary criminal history information for purposes of
22 employing current or prospective employees who may be seeking
23 entrance to private residences or adjacent grounds in the course
24 of their employment shall be deemed a "compelling need" as
25 required to be shown in this subdivision.

26 (v) Nothing in this section shall be construed as imposing any
27 duty upon public utilities or cable corporations to request state
28 summary criminal history information on any current or prospective
29 employees.

30 (B) For purposes of this paragraph, "cable corporation" means
31 any corporation or firm that transmits or provides television,
32 computer, or telephone services by cable, digital, fiber optic,
33 satellite, or comparable technology to subscribers for a fee.

34 (C) Requests for federal level criminal history information
35 received by the Department of Justice from entities authorized
36 pursuant to subparagraph (A) shall be forwarded to the Federal
37 Bureau of Investigation by the Department of Justice. Federal level
38 criminal history information received or compiled by the
39 Department of Justice may then be disseminated to the entities
40 referenced in subparagraph (A), as authorized by law.

1 (D) (i) Authority for a cable corporation to request state or
2 federal level criminal history information under this paragraph
3 shall commence July 1, 2005.

4 (ii) Authority for a public utility to request federal level criminal
5 history information under this paragraph shall commence July 1,
6 2005.

7 (11) To any campus of the California State University or the
8 University of California, or any four year college or university
9 accredited by a regional accreditation organization approved by
10 the United States Department of Education, if needed in
11 conjunction with an application for admission by a convicted felon
12 to any special education program for convicted felons, including,
13 but not limited to, university alternatives and halfway houses. Only
14 conviction information shall be furnished. The college or university
15 may require the convicted felon to be fingerprinted, and any inquiry
16 to the department under this section shall include the convicted
17 felon's fingerprints and any other information specified by the
18 department.

19 (12) To any foreign government, if requested by the individual
20 who is the subject of the record requested, if needed in conjunction
21 with the individual's application to adopt a minor child who is a
22 citizen of that foreign nation. Requests for information pursuant
23 to this paragraph shall be in accordance with the process described
24 in Sections 11122 to 11124, inclusive. The response shall be
25 provided to the foreign government or its designee and to the
26 individual who requested the information.

27 (d) Whenever an authorized request for state summary criminal
28 history information pertains to a person whose fingerprints are on
29 file with the Department of Justice and the department has no
30 criminal history of that person, and the information is to be used
31 for employment, licensing, or certification purposes, the fingerprint
32 card accompanying the request for information, if any, may be
33 stamped "no criminal record" and returned to the person or entity
34 making the request.

35 (e) Whenever state summary criminal history information is
36 furnished as the result of an application and is to be used for
37 employment, licensing, or certification purposes, the Department
38 of Justice may charge the person or entity making the request a
39 fee that it determines to be sufficient to reimburse the department
40 for the cost of furnishing the information. In addition, the

1 Department of Justice may add a surcharge to the fee to fund
2 maintenance and improvements to the systems from which the
3 information is obtained. Notwithstanding any other law, any person
4 or entity required to pay a fee to the department for information
5 received under this section may charge the applicant a fee sufficient
6 to reimburse the person or entity for this expense. All moneys
7 received by the department pursuant to this section, Sections
8 11105.3 and 26190, and former Section 13588 of the Education
9 Code shall be deposited in a special account in the General Fund
10 to be available for expenditure by the department to offset costs
11 incurred pursuant to those sections and for maintenance and
12 improvements to the systems from which the information is
13 obtained upon appropriation by the Legislature.

14 (f) Whenever there is a conflict, the processing of criminal
15 fingerprints and fingerprints of applicants for security guard or
16 alarm agent registrations or firearms qualification permits
17 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
18 of the Business and Professions Code shall take priority over the
19 processing of other applicant fingerprints.

20 (g) It is not a violation of this section to disseminate statistical
21 or research information obtained from a record, provided that the
22 identity of the subject of the record is not disclosed.

23 (h) It is not a violation of this section to include information
24 obtained from a record in (1) a transcript or record of a judicial or
25 administrative proceeding or (2) any other public record if the
26 inclusion of the information in the public record is authorized by
27 a court, statute, or decisional law.

28 (i) Notwithstanding any other law, the Department of Justice
29 or any state or local law enforcement agency may require the
30 submission of fingerprints for the purpose of conducting summary
31 criminal history information checks that are authorized by law.

32 (j) The state summary criminal history information shall include
33 any finding of mental incompetence pursuant to Chapter 6
34 (commencing with Section 1367) of Title 10 of Part 2 arising out
35 of a complaint charging a felony offense specified in Section 290.

36 (k) (1) This subdivision shall apply whenever state or federal
37 summary criminal history information is furnished by the
38 Department of Justice as the result of an application by an
39 authorized agency or organization and the information is to be
40 used for peace officer employment or certification purposes. As

1 used in this subdivision, a peace officer is defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2.

3 (2) Notwithstanding any other provision of law, whenever state
4 summary criminal history information is initially furnished
5 pursuant to paragraph (1), the Department of Justice shall
6 disseminate the following information:

7 (A) Every conviction rendered against the applicant.

8 (B) Every arrest for an offense for which the applicant is
9 presently awaiting trial, whether the applicant is incarcerated or
10 has been released on bail or on his or her own recognizance
11 pending trial.

12 (C) Every arrest or detention, except for an arrest or detention
13 resulting in an exoneration, provided, however, that where the
14 records of the Department of Justice do not contain a disposition
15 for the arrest, the Department of Justice first makes a genuine effort
16 to determine the disposition of the arrest.

17 (D) Every successful diversion.

18 (E) Every date and agency name associated with all retained
19 peace officer or nonsworn law enforcement agency employee
20 preemployment criminal offender record information search
21 requests.

22 (f) (1) This subdivision shall apply whenever state or federal
23 summary criminal history information is furnished by the
24 Department of Justice as the result of an application by a criminal
25 justice agency or organization as defined in Section 13101, and
26 the information is to be used for criminal justice employment,
27 licensing, or certification purposes.

28 (2) Notwithstanding any other provision of law, whenever state
29 summary criminal history information is initially furnished
30 pursuant to paragraph (1), the Department of Justice shall
31 disseminate the following information:

32 (A) Every conviction rendered against the applicant.

33 (B) Every arrest for an offense for which the applicant is
34 presently awaiting trial, whether the applicant is incarcerated or
35 has been released on bail or on his or her own recognizance
36 pending trial.

37 (C) Every arrest for an offense for which the records of the
38 Department of Justice do not contain a disposition or did not result
39 in a conviction, provided that the Department of Justice first makes
40 a genuine effort to determine the disposition of the arrest. However,

1 information concerning an arrest shall not be disclosed if the
2 records of the Department of Justice indicate or if the genuine
3 effort reveals that the subject was exonerated, successfully
4 completed a diversion or deferred entry of judgment program, or
5 the arrest was deemed a detention.

6 (D) Every date and agency name associated with all retained
7 peace officer or nonsworn law enforcement agency employee
8 preemployment criminal offender record information search
9 requests.

10 (m) (1) This subdivision shall apply whenever state or federal
11 summary criminal history information is furnished by the
12 Department of Justice as the result of an application by an
13 authorized agency or organization pursuant to Section 1522,
14 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
15 any statute that incorporates the criteria of any of those sections
16 or this subdivision by reference, and the information is to be used
17 for employment, licensing, or certification purposes.

18 (2) Notwithstanding any other provision of law, whenever state
19 summary criminal history information is initially furnished
20 pursuant to paragraph (1), the Department of Justice shall
21 disseminate the following information:

22 (A) Every conviction of an offense rendered against the
23 applicant.

24 (B) Every arrest for an offense for which the applicant is
25 presently awaiting trial, whether the applicant is incarcerated or
26 has been released on bail or on his or her own recognizance
27 pending trial.

28 (C) Every arrest for an offense for which the Department of
29 Social Services is required by paragraph (1) of subdivision (a) of
30 Section 1522 of the Health and Safety Code to determine if an
31 applicant has been arrested. However, if the records of the
32 Department of Justice do not contain a disposition for an arrest,
33 the Department of Justice shall first make a genuine effort to
34 determine the disposition of the arrest.

35 (3) Notwithstanding the requirements of the sections referenced
36 in paragraph (1) of this subdivision, the Department of Justice
37 shall not disseminate information about an arrest subsequently
38 deemed a detention or an arrest that resulted in either the successful
39 completion of a diversion program or exoneration.

1 (n) (1) This subdivision shall apply whenever state or federal
2 summary criminal history information, to be used for employment,
3 licensing, or certification purposes, is furnished by the Department
4 of Justice as the result of an application by an authorized agency,
5 organization, or individual pursuant to any of the following:

6 (A) Paragraph (9) of subdivision (c), when the information is
7 to be used by a cable corporation.

8 (B) Section 11105.3 or 11105.4.

9 (C) Section 15660 of the Welfare and Institutions Code.

10 (D) Any statute that incorporates the criteria of any of the
11 statutory provisions listed in subparagraph (A), (B), or (C), or of
12 this subdivision, by reference.

13 (2) With the exception of applications submitted by
14 transportation companies authorized pursuant to Section 11105.3,
15 and notwithstanding any other provision of law, whenever state
16 summary criminal history information is initially furnished
17 pursuant to paragraph (1), the Department of Justice shall
18 disseminate the following information:

19 (A) Every conviction rendered against the applicant for a
20 violation or attempted violation of any offense specified in
21 subdivision (a) of Section 15660 of the Welfare and Institutions
22 Code. However, with the exception of those offenses for which
23 registration is required pursuant to Section 290, the Department
24 of Justice shall not disseminate information pursuant to this
25 subdivision unless the conviction occurred within 10 years of the
26 date of the agency's request for information or the conviction is
27 over 10 years old but the subject of the request was incarcerated
28 within 10 years of the agency's request for information.

29 (B) Every arrest for a violation or attempted violation of an
30 offense specified in subdivision (a) of Section 15660 of the Welfare
31 and Institutions Code for which the applicant is presently awaiting
32 trial, whether the applicant is incarcerated or has been released on
33 bail or on his or her own recognizance pending trial.

34 (o) (1) This subdivision shall apply whenever state or federal
35 summary criminal history information is furnished by the
36 Department of Justice as the result of an application by an
37 authorized agency or organization pursuant to Section 379 or 550
38 of the Financial Code, or any statute that incorporates the criteria
39 of either of those sections or this subdivision by reference, and the

1 information is to be used for employment, licensing, or certification
2 purposes.

3 (2) Notwithstanding any other provision of law, whenever state
4 summary criminal history information is initially furnished
5 pursuant to paragraph (1), the Department of Justice shall
6 disseminate the following information:

7 (A) Every conviction rendered against the applicant for a
8 violation or attempted violation of any offense specified in Section
9 550 of the Financial Code.

10 (B) Every arrest for a violation or attempted violation of an
11 offense specified in Section 550 of the Financial Code for which
12 the applicant is presently awaiting trial, whether the applicant is
13 incarcerated or has been released on bail or on his or her own
14 recognizance pending trial.

15 (p) (1) This subdivision shall apply whenever state or federal
16 criminal history information is furnished by the Department of
17 Justice as the result of an application by an agency, organization,
18 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
19 by a transportation company authorized pursuant to Section
20 11105.3, or any statute that incorporates the criteria of that section
21 or this subdivision by reference, and the information is to be used
22 for employment, licensing, or certification purposes.

23 (2) Notwithstanding any other provisions of law, whenever state
24 summary criminal history information is initially furnished
25 pursuant to paragraph (1), the Department of Justice shall
26 disseminate the following information:

27 (A) Every conviction rendered against the applicant.

28 (B) Every arrest for an offense for which the applicant is
29 presently awaiting trial, whether the applicant is incarcerated or
30 has been released on bail or on his or her own recognizance
31 pending trial.

32 (q) All agencies, organizations, or individuals defined in
33 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
34 Department of Justice for subsequent notification pursuant to
35 Section 11105.2. This subdivision shall not supersede sections that
36 mandate an agency, organization, or individual to contract with
37 the Department of Justice for subsequent notification pursuant to
38 Section 11105.2.

1 (r) Nothing in this section shall be construed to mean that the
2 Department of Justice shall cease compliance with any other
3 statutory notification requirements.

4 (s) The provisions of Section 50.12 of Title 28 of the Code of
5 Federal Regulations are to be followed in processing federal
6 criminal history information.

7 (t) Whenever state or federal summary criminal history
8 information is furnished by the Department of Justice as the result
9 of an application by an authorized agency, organization, or
10 individual defined in subdivisions (k) to (p), inclusive, and the
11 information is to be used for employment, licensing, or certification
12 purposes, the authorized agency, organization, or individual shall
13 expeditiously furnish a copy of the information to the person to
14 whom the information relates if the information is a basis for an
15 adverse employment, licensing, or certification decision. When
16 furnished other than in person, the copy shall be delivered to the
17 last contact information provided by the applicant.

18 SEC. 4. Section 16504.5 of the Welfare and Institutions Code
19 is amended to read:

20 16504.5. (a) (1) Notwithstanding any other provision of law,
21 pursuant to subdivision (b) of Section 11105 of the Penal Code, a
22 child welfare agency may secure from an appropriate governmental
23 criminal justice agency the state summary criminal history
24 information, as defined in subdivision (a) of Section 11105 of the
25 Penal Code, through the California Law Enforcement
26 Telecommunications System pursuant to subdivision (d) of Section
27 309, and subdivision (a) of Section 1522 of the Health and Safety
28 Code, *and may secure state-summary criminal history information*
29 *from the State Department of Social Services pursuant to Section*
30 *1522.08 of the Health and Safety Code*, for the following purposes:

31 (A) To conduct an investigation pursuant to Section 11166.3 of
32 the Penal Code or an investigation involving a child in which the
33 child is alleged to come within the jurisdiction of the juvenile court
34 under Section 300.

35 (B) (i) To assess the appropriateness and safety of placing a
36 child who has been detained or is a dependent of the court, in the
37 home of a relative assessed pursuant to Section 309 or 361.4, or
38 in the home of a nonrelative extended family member assessed as
39 described in Section 362.7 during an emergency situation.

1 (ii) When a relative or nonrelative family member who has been
2 assessed pursuant to clause (i) and approved as a caregiver moves
3 to a different county and continued placement of the child with
4 that person is intended, the move shall be considered an emergency
5 situation for purposes of this subparagraph.

6 (C) To attempt to locate a parent or guardian pursuant to Section
7 311 of a child who is the subject of dependency court proceedings.

8 (D) To obtain information about the background of a nonminor
9 who has petitioned to reenter foster care under subdivision (e) of
10 Section 388, in order to assess the appropriateness and safety of
11 placing the nonminor in a foster care or other placement setting
12 with minor dependent children.

13 *(E) To assess the appropriateness and safety of placing a child*
14 *who has been detained or is a dependent of the court in a licensed*
15 *foster family home, group home, or state licensed foster home.*

16 *(F) To monitor the health and safety of persons under the*
17 *supervision of the county child welfare agency who are residing*
18 *in a licensed foster family home, group home, or state-licensed*
19 *foster home.*

20 (2) Any time that a child welfare agency initiates a criminal
21 background check through the California Law Enforcement
22 Telecommunications System for the purpose described in
23 subparagraph (B) of paragraph (1), the agency shall ensure that a
24 state-level fingerprint check is initiated within 10 calendar days
25 of the check, unless the whereabouts of the subject of the check
26 are unknown or the subject of the check refuses to submit to the
27 fingerprint check. The Department of Justice shall provide the
28 requesting agency a copy of all criminal history information
29 regarding an individual that it maintains pursuant to subdivision
30 (b) of Section 11105 of the Penal Code.

31 (b) Criminal justice personnel shall cooperate with requests for
32 criminal history information authorized pursuant to this section
33 and shall provide the information to the requesting entity in a
34 timely manner.

35 (c) Any law enforcement officer or person authorized by this
36 section to receive the information who obtains the information in
37 the record and knowingly provides the information to a person not
38 authorized by law to receive the information is guilty of a
39 misdemeanor as specified in Section 11142 of the Penal Code.

1 (d) Information obtained pursuant to this section shall not be
2 used for any purposes other than those described in subdivision
3 (a).

4 (e) Nothing in this section shall preclude a nonminor petitioning
5 to reenter foster care or a relative or other person living in a
6 relative's home from refuting any of the information obtained by
7 law enforcement if the individual believes the state- or federal-level
8 criminal records check revealed erroneous information.

9 (f) (1) A state or county welfare agency may submit to the
10 Department of Justice fingerprint images and related information
11 required by the Department of Justice of parents or legal guardians
12 when determining their suitability for reunification with a
13 dependent child subject to the jurisdiction of the juvenile court,
14 for the purposes of obtaining information as to the existence and
15 content of a record of state or federal convictions and state or
16 federal arrests, as well as information as to the existence and
17 content of a record of state or federal arrests for which the
18 Department of Justice establishes that the person is free on bail or
19 on his or her own recognizance pending trial or appeal. Of the
20 information received by the Department of Justice pursuant to this
21 subdivision, only the parent's or legal guardian's criminal history
22 for the time period following the removal of the child from the
23 parent or legal guardian shall be considered.

24 (2) A county welfare agency or county probation office may
25 submit to the Department of Justice fingerprint images and related
26 information required by the Department of Justice of nonminors
27 petitioning to reenter foster care under Section 388, in order to
28 assess the appropriateness and safety of placing the nonminor in
29 a foster care or other placement setting with minor dependent
30 children.

31 (3) When received, the Department of Justice shall forward to
32 the Federal Bureau of Investigation requests for federal summary
33 criminal history information received pursuant to this subdivision.
34 The Department of Justice shall review the information returned
35 from the Federal Bureau of Investigation and respond to the state
36 or county welfare agency.

37 (4) The Department of Justice shall provide a response to the
38 state or county welfare agency pursuant to subdivision (p) of
39 Section 11105 of the Penal Code.

1 (5) The state or county welfare agency shall not request from
2 the Department of Justice subsequent arrest notification service,
3 as provided pursuant to Section 11105.2 of the Penal Code, for
4 individuals described in this subdivision.

5 (6) The Department of Justice shall charge a fee sufficient to
6 cover the costs of processing the request described in this
7 subdivision.

8 (7) This subdivision shall become operative on July 1, 2007.

9 (g) A fee, determined by the Federal Bureau of Investigation
10 and collected by the Department of Justice, shall be charged for
11 each federal-level criminal offender record information request
12 submitted pursuant to this section and Section 361.4.